IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jai Narayan. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 488/2002
against the order dated 18-5-2002 passed
by the Additional Sessions Judge (Fast Track),
Balotra, in Criminal Revision No. 11/2002.

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Date of Order: September 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sandeep Mehta, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 18-5-2002 passed by the Additional Sessions Judge (Fast Track), Balotra (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 11/2002, whereby the revision petition filed by the petitioner against the order dated 7-6-1999 passed by the Additional Chief Judicial Magistrate, Balotra (for short, "the trial Court" hereinafter), was dismissed.

I have heard learned counsel for the parties.

Carefully gone through the orders passed by the Courts below as also the material on record.

The facts and circumstances giving rise to the instant criminal miscellaneous petition are that the petitioner lodged an FIR with Police Station, Balotra against Nemi Chand, Kanti Lal, Vijay Kumar and Goverdhan for the offences under Sections 467, 468, 420 and 120-B, IPC with the allegation that the petitioner is the authorized Gas Dealer of Indian Oil Corporation at Balotra in the name and style of "M/s. Balotra Gas Agency." The persons named in the FIR forged the vouchers and presented before the petitioner, on the basis of which gas connections were released. After thorough investigation, the police filed Challan against accused Nemi Chand, Goverdhan, Kanti Lal and Vijay Kumar for the offences noticed above. During trial of the case, the prosecution examined fifteen witnesses, namely, PW 1 Chandan Mal, PW 2 Mahendra Kumar, PW 3 Mohan Lal, PW 4 Gautam Chand, PW 5 Pawan Kumar, PW 6 Ravindra Kumar, PW 7 Chanan Mal, PW 8 Gautam Chand, PW 9 Susan Rajan, PW 10 Mool Chand, PW 11 Jagdish Kumar, PW 12 Paras Mal, PW 13 Ghisu Lal, PW 14 Ram Babu and PW 15 Meen Lal. The statements of these witnesses were recorded under Section 161 of the Code, wherein these witnesses deposed against the aforesaid four persons who have been charge-sheeted by the Police; however, when examined before the trial Court, they did not support the

prosecution case and turned hostile and came with a new case that it was the present petitioner, from whom they got the gas connections released.

However, on careful perusal of the statements of these witnesses, after having been declared hostile and cross-examined by the Public Prosecutor, it is clear that these witnesses, in order to save the accused therein, did not make statement against those accused and came with a totally new version and in stereo-type statement, they stated that they took the gas connections from the present petitioner.

It is not in dispute that the petitioner is an authorized gas dealer of Indian Oil Corporation and was authorized to release the gas connections. In their statement before the police, the aforesaid fifteen witnesses did not state that it was the present petitioner who fraudulently and dishonestly induced persons to take gas connection by forging the documents. Even if it is assumed that their statement is true that it was the present petitioner who released the gas connection, still it cannot be said that it was the present petitioner who forged the documents.

The trial Court, during pendency of the case, after recording the statements of the witnesses noticed above, arraigned the petitioner as an accused in the case though the petitioner himself is the complainant and a witness to the

prosecution case. He has been cited as witness No.1 in the list of witnesses filed by the police along with the charge-sheet.

Keeping in view the statements of hostile witnesses, in my view, the court below fell in error in arraigning the present petitioner as an accused whereas the petitioner is the complainant in the case and one of the principal prosecution witnesses. The Revisional Court also erred in not considering the evidence in right perspective by observing that the petitioner was the master-mind behind the commission of the crime. In order to secure the ends of justice, in my view, the impugned orders deserve to be set aside.

In the result, the criminal miscellaneous petition is allowed. The orders dated 7-6-1999 and 18-5-2002 passed by the trial Court and the Revisional Court respectively, are set aside.

(H.R. PANWAR), J .

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